
Commerce & Labor Committee

HB 1814

Brief Description: Regarding farm labor contracting activities.

Sponsors: Representatives Kenney, Wood, Green, Conway, Hunt, Hasegawa, Simpson, Ormsby, Williams, Sells, Miloscia, Darneille, Santos, Chase and Hudgins.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Modifies the state Farm Labor Contractor Act, including provisions on licensing, bonding, duties and prohibited acts, and nondiscrimination.
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Hearing Date: 2/11/09

Staff: Jill Reinmuth (786-7134)

Background:

The state Farm Labor Contractor Act (FLCA) provides for licensing and regulation of farm labor contractors (contractors) by the Department of Labor and Industries (Department). A "farm labor contractor" is a person who, for a fee, performs any farm labor contracting activity. "Farm labor contracting activity" means recruiting, soliciting, employing, supplying, transporting, or hiring agricultural workers.

Exemptions

Certain nonprofit corporations or organizations that perform farm labor contracting activities for their members are exempt. Persons who perform farm labor contracting activities within the scope of their regular employment for one agricultural employer, unless they receive commissions or fees, are also exempt.

License - Requirements for Issuing

To obtain a license, an applicant must: submit an application; pay a license fee; provide proof of

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liability insurance; file a surety bond (or other security in lieu of a bond); disclose whether the applicant's license has ever been suspended, revoked, or denied; and disclose whether the applicant has outstanding judgments in state or federal court. In addition, the Director of the Department (Director) must be satisfied as to the applicant's "character, competency, and responsibility." The Director may not issue a license to an applicant who sells intoxicating liquor where the applicant operates as a contractor, or whose license has been revoked in the past three years.

To renew a one-year or a two-year license, the contractor must pay the license fee and provide proof of a renewed surety bond. To renew a two-year license, the contractor must also file a written application disclosing certain information required in the original application.

License - Grounds for Denial, Revocation, and Suspension

To revoke, suspend, or refuse to issue or renew a license, the Director must determine that the contractor: violated the FLCA or other state laws regulating agricultural employment; made misrepresentations or false statements in its application; induced agricultural employees to violate existing employment contracts; or has unsatisfied judgments in state or federal court. Any person may protest the grant or renewal of a license.

Surety Bond

The amount of the surety bond or other security is set by the Director, but must not be less than \$5,000. The surety bond must be conditioned on payment of sums owed under contract to agricultural workers. A person having a claim for wages pursuant to the FLCA may bring suit on the surety bond or the other security.

Duties

Contractors are required to: comply with the terms and provisions of contracts entered into with third persons; give workers written information about their compensation and conditions of employment, as well as other work-related information; and keep certain employment records.

Prohibited Acts

Contractors are prohibited from: making misrepresentations or false statements in applications; making false, fraudulent, or misleading representations, or publishing such information, concerning the terms or conditions or existence of employment; sending or transporting workers to places where the contractor knows of a strike or lockout; or committing crimes involving moral turpitude.

Anti-Retaliation

Contractors and agricultural employers are prohibited from discriminating against agricultural employees for pursuing their rights under the FLCA.

Unlicensed Contractors

Persons who knowingly use an unlicensed contractor's services are personally, jointly, and severally liable with the unlicensed contractor. Users may rely on a license issued by the Director to the contractor or on a representation by the Director that the contractor is licensed.

Civil Actions

Persons aggrieved by violations of the FLCA may bring a suit in court for damages. If the court determines that there was a violation, the court may award either damages up to and including actual damages or statutory damages of \$500 per plaintiff per violation, whichever is greater. The court also may award other equitable relief.

Persons having a claim against a contractor for violations of the FLCA may bring suit against the contractor and the surety bond or security deposit. If the actions exceed the amount of the bond, the claims are satisfied as follows: first, wages, including employee benefits; second, other contractual damages; and third, costs and attorneys' fees.

Summary of Bill:

Various provisions of the state Farm Labor Contractor Act (FLCA) are modified.

Application and Jurisdiction

The FLCA applies to all transactions, acts, and omissions of farm labor contractors (contractors) and other persons performing farm labor contracting activities that are within the state's constitutional power to regulate, and not preempted by federal law. These activities include:

- recruitment of workers in Washington to perform work outside the state;
- recruitment of workers outside the state to perform work in Washington;
- housing of workers in Washington for work in another state;
- housing of workers in connection with work in Washington;
- transportation of workers in Washington; and
- the payment terms and conditions, disclosure, and recordkeeping required for work performed outside this state by workers recruited in Washington.

For purposes of establishing personal jurisdiction, a contractor or person performing farm labor contracting activities is deemed to be doing business in Washington. The contractor or person is subject to the jurisdiction of Washington courts if the contractor or person contracts with a Washington resident or is considered to be doing business under any other law.

Exemptions

The exemptions for agricultural associations and agricultural employees are changed. Agricultural associations and agricultural employers are exempt from the FLCA's licensing and bonding requirements. They are subject to its other requirements, but only when performing farm labor contracting activities with respect to agricultural guest workers.

License - Requirements for Issuing

The information required in an application is increased. The applicant must describe on his or her application any past violations or settlements related to labor protection laws in the United States or other countries, as well as any current allegations or claims that the applicant has violated labor protection laws. In addition, the applicant must describe any suspension, revocation, or denial of a license, and describe any outstanding debts arising out of contractor or employer activities.

License - Grounds for Denial, Revocation, and Suspension

The grounds on which the Director of the Department of Labor and Industries (Director) must deny an application include: material misrepresentations in the application; a failure to fully satisfy outstanding debts owed to workers in relation to labor protection laws; the sale of intoxicating liquors where the applicant operates as a contractor; or the revocation of any contractor license within three years of the date of application. The grounds on which the Director may revoke or suspend a license include engaging in the actions listed above that result in the denial or refusal of an application for a license. The Director is authorized to order summary suspension of a license pending procedures for revocation or other action if "public health, safety, or welfare imperatively requires emergency action." These proceedings must be "promptly instituted and determined."

Surety Bond

The amount of the surety bond or other security is set by the Director, but the minimum amount is increased from \$5,000 to: \$25,000 if less than 21 agricultural workers are employed; \$50,000 if 21 to 50 agricultural workers are employed; and \$75,000 if more than 50 workers are employed. The surety bond is conditioned on payment of sums owed to agricultural workers. A person having a claim for any violation of the FLCA may bring suit on the surety bond or the other security.

Duties

The persons who have duties under the FLCA are broadened, and some of the duties are modified. Agricultural associations and agricultural employers performing farm labor contracting activities with respect to agricultural guest workers have many of the same duties as farm labor contractors. They are required to: comply with working arrangements, whether oral or written, as well as contracts; give workers written information about their compensation and conditions of employment, including any production standards; disclose that no fees may be charged for recruitment; and keep certain employment records.

Prohibited Acts

The persons subject to the prohibitions under the FLCA are broadened, and one prohibition is added. Persons performing farm labor contracting activities are subject to the same prohibitions as farm labor contractors. They are prohibited from charging fees to agricultural workers related to recruiting, soliciting, or supplying an agricultural worker.

Anti-Retaliation

The anti-retaliation provision is revised to explicitly prohibit intimidating, threatening, coercing, blackmailing, discharging, and discriminating against agricultural workers for pursuing their rights under the FLCA.

Unlicensed Contractors

A provision is added requiring users to take reasonable steps to determine that a contractor has a valid license before using the contractor's services. Users who do not take such steps are personally, jointly, and severally liable with the unlicensed contractor. The only defense that may be asserted is that the user relied on a license issued by the Director to the contractor or on a representation by the Director that the contractor is licensed.

Civil Actions

The damages provision is modified to require a court, if it determines that the FLCA was violated, to award actual damages or statutory damages of \$500 per plaintiff per violation, whichever is greater.

If claims exceed the amount of the bond, the claims are satisfied as follows: first, wages, including employee benefits; second, other damages; and third, costs and attorneys' fees.

Agricultural employers have the liability of contractors and agricultural associations if: (1) no solvent contractor is subject to service of process; or (2) the court determines that it is highly probable that the worker would be unable to enforce the judgment against the contractor or the agricultural association.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on November 1, 2009.